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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,222	12/05/2003	Peter G. Klimko	2443 US	9553

7590 11/27/2006
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EXAMINER

FAY, ZOHREH A

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,222

Applicant(s)

KLIMKO ET AL.

Examiner

Zohreh A. Fay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-7 are presented for examination.

The remarks filed on September 8, 2006 have been received and entered.

Claims 1-7 are rejected under 35 U.S.C. 103 as being unpatentable over Malfroy-Camine et al. (6,046,188) in view of LaHaye et al. (5,075,116), Crapo et al. (5,994,339), Cambell and Winkler et al. (molecular Vision 1999) for the reasons set forth in the office action of November 17, 2004, July 29 2005 and March 9, 2006.

Applicant's arguments and remarks have been carefully considered, but are not deemed to be persuasive. Applicant in his remarks argues that Malfroy-Camine does not teach the use of compound A to treat retinal maladies. The arguments are not well taken. Malfroy-Camine is cited to show the antioxidant and superoxide dismutase activity of the claimed compounds. Applicant also argues that Winkler does not provide a detailed discussion of the treatment of AMD, much less the use of SOD mimetics to treat AMD. The arguments are not well taken. Obviousness does not require a detailed discussion. The mere suggestion that there is a correlation between oxidation and macular degeneration and the effect of superoxide dismutase in preventing oxidative damage make the Winkler a valid reference for obviousness rejection. See *In Re Lambert and Knort*, 192 USPQ 278 (CCPA 1976) at 280 where the court stated "the question under 35 U.S.C. 103 is not what the references explicitly teach, but what they would have suggested to one skilled in the art at the time the invention was made." Applicant also alleges criticality to the smaller molecules of the present invention in comparison with the larger molecules of Campbell and Crapo. The allegation is not well taken. Campbell is cited to show that injection is a routine route of ophthalmic

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administration. Crapo is cited to show that compounds having superoxide dismutase activity have been previously used for the treatment of AMD. In conclusion: the primary reference was used to show the anti-oxidant and superoxide dismutase active of the claimed compounds. The secondary reference was used to show that there is a correlation between oxidation and macular degeneration, and the effect of superoxide dismutase in preventing oxidative damage. The secondary references also were used to demonstrate that the small or large compounds having superoxide dismutase activity have been previously used for the treatment of AMD. The above references teach that the claimed compounds have superoxide dismutase activity. The relied upon references also teach the general concept of the correlation between macular degeneration and oxidation and the use of compounds with super dismutase activity in preventing oxidative damage. Thus, it would have been obvious to a person skilled in the art to use the claimed compounds having superoxide dismutase activity for the treatment of conditions associated with oxidative damage such as AMD in the absence of evidence to the contrary.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh A. Fay whose telephone number is (571) 272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Z.F

ZOHREH FAY
PRIMARY EXAMINER
GROUP 1800
Zohreh Fay